BARRY GOLDWATER
ARIZONA

United States Senate

WASHINGTON, D.C. 20510

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May 7, 1984

The Honorable William Casey
Director
Central Intelligence Agency
Washington, D. C. 20250

Dear Bill:

I'm enclosing a short paper on the statutory system of Congressional Oversight.

What I would like you to do is to copy the marked paragraph on the first page and see that every one of your people who comes over to brief our Committee is aware of this. Bill, I can't emphasize too strongly the necessity of your complying with this law. A continuation of incomplete briefings or even a hint of dishonest briefings can cause you a lot of trouble.

With best wishes,

Barry Goldwater

SELECTED KEY FEATURES OF THE STATUTORY SYSTEM FOR CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

The Intelligence Oversight Act of 1980 modified the Hughes-Ryan Amendment on Congressional notification of covert action operations, and added a new title V to the National Security Act of 1947, creating a statutory system of congressional oversight.

The 1980 oversight legislation represented an agreement between the Executive and Legislative branches to replace the previous requirement for "timely" reporting of covert actions to eight "appropriate" congressional committees* with a system that centralized oversight in the Intelligence Committees under a new set of requirements.

The current statutory system imposes upon the DCI and the heads of all other Intelligence Community organizations the obligation to:

-- keep the Intelligence Committees "fully and currently informed" of all intelligence activities, including "any significant anticipated intelligence activity."

The modified Hughes-Ryan Amendment specifies that each covert action operation is to be considered a "significant anticipated intelligence activity." This means that covert action operations must be reported to the Intelligence Committees prior to implementation in accordance with title V of the National Security Act.

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* These eight Committees were the House and Senate Intelligence, Armed Services, Foreign Relations and Appropriations Committees.

Although all covert action operations are by definition "significant anticipated intelligence activities," it is clear that new or modified covert action operations requiring a Presidential finding are not the only things that are "significant anticipated intelligence activities."

-- Activities planned to be undertaken within the scope of an existing finding must in and of themselves be considered to be "significant anticipated intelligence activities" requiring prior notification to the Committees if the activities are not mere day-to-day implementation of an ongoing covert action operation, but are instead inherently significant because of their political sensitivity, potential for adverse consequences, involvement of U.S. personnel, level of official approval within the Executive Branch, or some other factor (Note: The Agency now appears to have accepted the validity of this proposition).

-- It also is clear from the oversight legislation, and from the legislative history surrounding its enactment, that the obligation to notify the Committees of "significant anticipated intelligence activities" prior to implementation also extends to "certain collection and counterintelligence activities." (See Senate Report 96-730, pages 7-8.)

The oversight legislation imposes two additional obligations upon the DCI and other heads of Intelligence Community organizations, as follows:

-- to furnish any information or material concerning intelligence activities which is requested by either of the Intelligence Committees in order to carry out its authorized responsibilities; and

-- to report to the Committees in a timely fashion any illegal intelligence activity or significant intelligence failure.

All of the obligations contained in the oversight legislation are conditioned by the so-called preambular

clauses, which specify that the obligations are to be undertaken:

-- to the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the Legislative and Executive branches; and

-- to the extent consistent with due regard for the protection of classified information and sources and methods from unauthorized disclosure.

The preambular language has not, however, figured in the recent controversy between the DCI and the Committee. The oversight legislation's specific provisions for prior notice of significant anticipated intelligence activities only to eight specified congressional leaders in extraordinary circumstances, and for subsequent timely notice of covert actions to the Committees, also have not been relevant to the recent controversy.